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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 Domini Alia Ferris,

No. CV-24-00116-PHX-JAT

10 Plaintiff,

**ORDER**

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

15 Pending before the Court is the parties' stipulation to an award of attorneys' fees  
16 under the Equal Access to Justice Act ("EAJA"). (Doc. 15).

17 "A litigant is entitled to attorneys' fees under the EAJA if: '(1) he is the  
18 prevailing party; (2) the government fails to show that its position was  
19 substantially justified or that special circumstances make an award unjust;  
20 and (3) the requested fees and costs are reasonable.' *Carbonell v. I.N.S.*, 429  
21 F.3d 894, 898 (9th Cir. 2005) (citing *Perez-Arellano v. Smith*, 279 F.3d 791,  
22 793 (9th Cir. 2002)); see also 28 U.S.C. § 2412(d)(1)(A)."

23 *Michele M. v. Saul*, No. 19-CV-00272-JLB, 2020 WL 5203375, at \*1 (S.D. Cal. Sept. 1,  
24 2020).

25 Here, the totality of the parties' discussion regarding Plaintiff's entitlement to fees  
26 under the EAJA is: "... such award should not be used as precedent in future cases, nor be  
27 construed as a concession by the Commissioner that his original decision denying benefits  
28 was not substantially justified. Accordingly, Plaintiff is entitled to attorney fees in the  
amount of \$2,544.04 as a compromise settlement, which does not constitute an admission  
of liability on the part of Defendant under the EAJA or otherwise." (Doc. 15 at 2).

1        Previously, this Court remanded this case to the social security administration for  
 2 further proceedings. (Doc. 13). Accordingly, the Court finds that Plaintiff is the prevailing  
 3 party.

4        Regarding prong two, the Ninth Circuit Court of Appeals has explained:

5        Pursuant to the EAJA, we are required to award [Plaintiff] fees and other  
 6 expenses incurred in connection with his civil action unless we find that the  
 7 position of the United States was “substantially justified” or that special  
 8 circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A).

9        The test for determining whether the Secretary’s position was substantially  
 10 justified under the EAJA is whether the position had a reasonable basis in  
 11 both law and fact—that is, whether it was justified “to a degree that could  
 12 satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565  
 13 (1988); *see also Barry v. Bowen*, 825 F.2d 1324, 1330 (9th Cir. 1987). The  
 14 burden is on the Secretary to prove that his position was substantially  
 15 justified. *Id.*

16        *Russell v. Sullivan*, 930 F.2d 1443, 1445 (9th Cir. 1991).

17        The Government’s stipulation to pay fees, while simultaneously not admitting it  
 18 owes the fees, is an ambiguous legal position. This case was remanded by stipulation of  
 19 the parties (Docs. 12-14), and this Court has never evaluated either party’s positions.  
 20 Nonetheless, applying the test as articulated in *Russell*, the Court finds that the Government  
 21 has failed to carry its burden to prove that its position was substantially justified or that  
 22 special circumstances make an award unjust. *Russell*, 930 F.2d at 1445; *see also Michele*  
 23 *M.*, 2020 WL 5203375, at \*1.

24        Finally, the Court should award only reasonable fees. Here, the Court has not been  
 25 provided with a billing statement. Thus, the Court does not know the rate charged or the  
 26 hours expended. Nonetheless, the Court finds that the Government, by the stipulation, has  
 27 conceded that the amount of fees sought in this case is reasonable.

28        Plaintiff’s counsel states in the stipulation that Plaintiff has signed an assignment of  
 29 any award of fees to her. The Court has not been provided with a copy of the assignment.  
 30 Nonetheless, the Court will accept Plaintiff’s counsel’s representation that such an  
 31 assignment is available in her records for review if this representation is ever disputed.

32        Based on the foregoing,

**IT IS ORDERED** granting the stipulation (Doc. 15) such that fees and expenses in the amount of \$2,544.04 as authorized by 28 U.S.C. § 2412, and costs in the amount of \$0 as authorized by 28 U.S.C. § 1920, are awarded to Plaintiff subject to the terms of the Stipulation.

**IT IS FURTHER ORDERED** that if, after receiving this Order, the Commissioner:

(1) determines that Plaintiff does not owe a debt that is subject to offset under the Treasury Offset Program, and (2) agrees to waive the requirements of the Anti-Assignment Act, then the check for the fees awarded herein will be made payable to Plaintiff's attorney pursuant to the assignment executed by Plaintiff. However, if there is a debt owed under the Treasury Offset Program, the Commissioner cannot agree to waive the requirements of the Anti-Assignment Act, and any remaining Equal Access to Justice Act fees after offset will be paid by a check made out to Plaintiff but delivered to Plaintiff's attorney.<sup>1</sup>

Dated this 1st day of October, 2024.

  
James A. Teilborg  
Senior United States District Judge

<sup>1</sup> This award is without prejudice to Plaintiff seeking attorneys' fees under section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA.